

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEALED SEARCH WARRANTS, JUSTIN SMITH.

NOS 4:16-MJ-409-1, 4:16-MJ-555-1
and 4:16-MJ-556-1

RESPONSE TO SUR-REPLY

COMES NOW, SETH KRETZER, court-appointed Receiver over JP GP, LLC, and files this Response to the Sur-Reply filed at Doc. No. 47.

INTRODUCTION: THE RECEIVER DID NOT TELL THE PROSECUTOR HE WOULD CALL SMITH’S DEFENSE COUNSEL ABOUT A QUESTION THAT HAS BEEN ANSWERED REPEATEDLY

The Sur-Reply contains the following sentence: “The Receiver stated that he would file a notice to the Court that the Receiver and the United States conferred and that a Court order was necessary.” Doc. No. 47, p. 2. But the fact that an “order was necessary” is implicit in the fact that a Rule 41 motion was filed with a proposed order attached. It must be remembered that this ‘necessity’ is the exclusive function of the fact that the Government will not make available documents for copying the originals of which the Receiver is legally entitled to in the first place.

Receiver does not know what an additional phone call to Smith’s defense counsel is supposed to accomplish. The Rule 41 motion was clear; “the Government’s decision not to

make the flight logs available for copying is contingent on ‘consent’ from Mr. Justin Smith that he will not give.” In other words, Smith was opposed on June 2 and he remains opposed on June 15. The Prosecutor has re-affirmed this fact. But reiterations do not change the fact that Smith’s feelings on the matter could not be more irrelevant to a corporate entity that is, definitionally, not the person of Justin Smith.

WHILE THERE IS NO DISPUTE THAT THE TURNOVER ORDER IS VALID, ADDITIONAL DOCUMENTS SHOW THAT JG GP, LLC IS THE OWNER OF THE PILATUS

This seriatim of phone calls to Smith’s counsel (about the exact same question) demonstrates the incorrect legal premise the Government is operating under:

The United States has not been presented with sufficient information to form a conclusion as to whether the Receiver’s claims are correct under the law that “1) Justin Smith has no property interest in the flight logs,” and “Under the turnover order, all property of JG GP LLC belongs to the Receiver.”

Doc. No. 47, p. 2.

In point of fact, the “sufficient information” is the turnover order attached as an exhibit to the Rule 41 motion. But in the event more documentation is needed, reproduced below is the (year 2016) DOT/FAA “Aircraft Registration Application” showing that the “applicant” for one “Pilatus Aircraft” with “Tail Number 1025” is “JG GP LLC”:

DocuSign Envelope ID: AD45B5A8-B931-4CD4-B1B9-824067295ADE



U.S. Department
of Transportation
Federal Aviation
Administration

UNITED STATES OF AMERICA – DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration – Mike Monroney Aeronautical Center

OMB Control No. 2120-0042
Collection Expires 4/30/2017

AIRCRAFT REGISTRATION APPLICATION

UNITED STATES REGISTRATION NUMBER	N 10HS	TYPE OF REGISTRATION (Check <u>one</u> box) <input type="checkbox"/> 1. Individual <input type="checkbox"/> 2. Partnership <input checked="" type="checkbox"/> 3. Corporation (Includes LLC's) <input type="checkbox"/> 4. Co-Owner <input type="checkbox"/> 5. Government <input type="checkbox"/> 6. Non-Citizen Corporation <input type="checkbox"/> 9. Non-Citizen Corporation Co-Owner
AIRCRAFT MANUFACTURER AND MODEL	Pilatus Aircraft Ltd. PC-12/47E	
AIRCRAFT SERIAL NUMBER	1025	
NAME(S) OF APPLICANT(S) [Person(s) shown on evidence of ownership. If individual, give last name, first name and middle initial.] JG GP LLC		

Furthermore, reproduced below is the Bill of Sale (signed August 26, 2016) showing conveyance of the plane with Registration Number N10HS to JG GP, LLC:

DocuSign Envelope ID: AD45B5A8-B931-4CD4-B1B9-824067295ADE

UNITED STATES OF AMERICA U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION		OMB Control No. 2120-0042 Exp. 04/30/2017
AIRCRAFT BILL OF SALE		
FOR AND IN CONSIDERATION OF \$ 1.00 & OVC THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS:		
UNITED STATES REGISTRATION NUMBER	N10HS	
AIRCRAFT MANUFACTURER & MODEL Pilatus Aircraft Ltd. PC-12/47E		
AIRCRAFT SERIAL No. 1025		
DOES THIS <u>26th</u> DAY OF <u>August</u> , 2016 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO:		
PURCHASER	NAME AND ADDRESS (IF INDIVIDUAL(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL.)	
	JG GP, LLC 1076 N. Ewing Street Helena, MT 59601	
Do Not Write in This Block FOR FAA USE ONLY		

THE GOVERNMENT'S UNWILLINGNESS TO ORGANIZE THE FILES IT SEIZED DO NOT DIMINISH THE RECEIVER'S LEGAL ENTITLEMENT TO THESE DOCUMENTS UNDER RULE 41

The Government concludes with the statement; "the flight logs are not organized by airplane and cannot be segregated." Doc. No. 47, p. 2.

As an initial matter, if the Government chooses to go forward with a criminal case, it will certainly have to organize these files for the Grand Jury and to produce to defense counsel in discovery. Regardless, Rule 41 instructs: "If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings." Receiver is not asking the Government to exert itself with

regards to these documents; all that is requested is for the documents to be put into a room at the U.S. Attorney's Office with a Xerox machine. If the genuine worry is that "the Receiver and his associates will not just be exposed to the flight logs for the Aircraft—they will be exposed to all of the flight logs" this Court's Order can contain a provision that the Prosecutor be allowed to stay in the conference room at all times these files are being copied and reviewed. Quite simply, Receiver has no interest in logs for planes that are not available to be sold.

Respectfully submitted,



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COURT-APPOINTED RECEIVER

CERTIFICATE OF SERVICE

I certify that this document was filed on the ECF System on June 15, 2017.



Seth Kretzer